IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 25TH JANUARY 2007 / 5TH MAGHA 1928

Crl.MC.No. 211 of 2007()

CMP.4956/2006 of JUDL.MAGISTRATE OF FIRST CLASS COURT, RANNI

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PETITIONER: COMPLAINANT

P.K.RAJASEKHARAN NAIR, AGED 53,
S/O.KRISHNAN NAIR, PARAPPALLIL HOUSE,
CHERUKOLE RANNY.

BY ADV. SRI.S.SANTOSH KUMAR (PERUNAD)

RESPONDENTS: ACCUSED/STATE.

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1. UTHAMAN NAIR, S/O.KESHAVAN NAIR,
PARAPPALLIL NADUKKEMURIYIL,
CHERUKOLE , RANY.

2. THANKAPPAN NAIR, S/O.NARAYANAN NAIR,
-DO-.. -DO-.

3. GOPALAN NAIR,S/O.KOCHUKUNJU,
PARAYIL PUTHUPARAMBIL, D0-.

4. STATE OF KERALA REP. BY THE PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SMT.LATHA

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 25/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.211 of 2007

Dated this the 25th day of January, 2007

ORDER

The grievance of the petitioner is that a private complaint filed by him was dismissed by the learned Magistrate for the reason that the earlier final report filed by the police had been accepted by the learned Magistrate. The counsel submits and I agree that the law has been incorrectly understood and applied by the learned Magistrate. The three Judge Bench decision of the Supreme Court on reference by a two Judge Bench in **Kishore Kumar Gyanchandani v. G.D.Mehrotra** [A.I.R 2002 Supreme Court 483] concludes the position beyond the shadow of controversy.

2. The reason assigned by the learned Magistrate in Annexure-3 order does not in these circumstances appear to be correct. Of course, the fact that the Investigator had filed a negative final report must instill in the mind of the Magistrate the need to consider the allegations carefully. But the mere fact that such an earlier report has been accepted is not a valid reason in law not to entertain a protest complaint filed by the complainant who feels dissatisfied with the refer report.

3. In the nature of the relief which I propose to grant, I am satisfied that it is not necessary to order notice to any of the accused who had not even entered appearance when the complaint was dismissed under Section 203 Cr.P.C.

4. This Crl.M.C is, in these circumstances, allowed. The impugned order is set aside. The learned Magistrate shall now consider the private complaint in accordance with law.

5. Hand over a copy of this order to the learned counsel for the petitioner for production before the learned Magistrate.

(R.BASANT, JUDGE)

rtr/-